United States Court of Appeals

for the Second Circuit

APPELLANT'S REPLY BRIEF

74-2698

IN THE
UNITED STATES COURT OF APPEALS
FOR THE
SECOND CIRCUIT

B

P/S

BUFFALO FORGE COMPANY

Plaintiff-Appellant

v.

UNITED STEELWORKERS OF AMERICA,AFL-CIO
I.W.ABEL as International President;
MITCHELL F. MAZUCA, Ind. & as District Director
JOHN GRUKA, Ind. & as International Representative
of United Steelworkers of America, AFL-CIO

LOCAL UNION NO. 1874 of the United
Steelworkers of America, AFL-CIO
VALENTINE F. ZIZZI, Ind. & As President; and
VALENTINE OLEJNICZAK, Ind. & as Vice President
of Local Union No. 1874 of the
United Steelworkers of America, AFL-CIO

LOCAL UNION NO. 3732 of the United
Steelworkers of America, AFL-CIO;
KERMIT HASELEY, Ind. & as President; and
ALFRED LIGAMMARI, Ind. & as Vice President
of Local Union No. 3732 of the
United Steelworkers of America, AFL-CIO

Defendants-Appellees

Appeal from a Decision and Order of the
United States District Court for the
Western District of New York
CIVIL No. 74-546

REPLY BRIEF FOR APPELLANT

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LIST OF AUTHORITIES CITED

UNITED STATES COURT OF APPEALS
for the
SECOND CIRCUIT

BUFFALO FORGE COMPANY, Plaintiff-Appellant, v. UNITED STEELWORKERS OF AMERICA, AFL-CIO, et al. Defendants-Appellees.	NO. 74-2698

APPELLANT'S REPLY BRIEF

I

The Unions contend that an injunction would have deprived production and maintenance employees from making common cause with their fellow office and technical workers who were engaged in a strike to secure an initial collective bargaining agreement. (Appellees' Brief, Page 2). The reasons the production and maintenance employees "honored" the office and technical union picket lines are crucial to this case, the Unions argue.

It must be noted that the defendants in this case are not the production and maintenance employees; but the International Union, two local unions and their officers and agents. It was in the absence of any employee action

which initiated the dispute herein, that the International Union's agents directed and caused the production and maintenance work stoppage on November 21, 1974.

There are no factual findings nor any claims by the Unions that the production and maintenance employees voted to strike or petitioned their union officers or representatives for authority to engage in any work stoppage to make "common cause" with the office workers. The office workers had been engaged in a strike and picketing at the Company's factories for three days when the International Union's agents summoned the local union officers to a meeting, whereat the latter were ordered not to cross the office workers' picket lines. Those picket lines had been established by the International Union and the office-technical local unions; the former was the certified bargaining agent of the office workers. (Appellees' Brief, Page 6, 2d Paragraph). Thus, the dispute between the Company and the International Union over the terms of the initial office worker contract didn't precipitate the underlying dispute in this action. The directives of the International Union caused the work stoppage of production and maintenance employees, who had been working during the first three days of the office workers' strike and picketing and had not honored the office workers picket lines until they were ordered to do so.[1/]

[1/] Thus, the Company disputes virtually every statement contained on Page 5, Paragraph 1, Page 12, 1st Sentence and Page 29, 1st Paragraph, 2d Sentence of the Appellees' Brief.

Preoccupation with the reasons the production and maintenance employees did honor the picket lines is mistaken on the facts in this record. The record, by the way, is devoid of any proof or findings regarding the motivation of production and maintenance employees. The dispute over the International Union agent's right to order these employees to honor the office worker picket lines, even when the production and maintenance employees had no reason or wish to honor the picket line, bears more than a striking resemblance to the disputes which supported the injunctions granted by the Third, Fourth and Seventh Circuits.

II

On four pages of its Brief, the Unions state:

> "The Office and Technical picket line were withdrawn and have not been reestablished." (Page 3).
>
> "The P & M work stoppage continued until the O & T picket lines were voluntarily withdrawn on 12-15-74. The O & T picket lines have not been reestablished as of this date." (Page 8).
>
> "Buffalo Forge can still arbitrate the P & M dispute, and if it prevails, its right to injunctive relief upon the return of the O & T picket lines would be stronger." (Page 34).
>
> "Even today, months after the O & T picket lines have been removed. . . ." (Page 37).

These statements are totally false; perhaps inadvertently, but still false. On January 7, 1975, counsel stipulated that the "office clerical-technical strike and picketing commenced November 16, 1974 and is continuing."

(App. 2a, Stipulation No. 5). We advise the Court, that the O & T picket lines have been continuously maintained at the Company's factories every day since November 16, 1974.

III

The Unions waive the right-to-strike banner in an ironic if not awkward fashion here. At Page 17 and at Page 18, Footnote 13, the Unions' Brief argues that the Norris-LaGuardia Act barred anti-strike injunctions because they necessarily interfered with the timing so crucial to a strike success and, thus, work through the employer's advantage. At Page 32, the Unions' Brief states: "The truth of the matter is that" the injunction would have "effectively broken the O & T strike."

The truth is that on the next work day after the District Court denied the preliminary injunction, all the production and maintenance employees returned to their jobs although the threat of a work stoppage recurrence persists. (App. 2a, Stipulation No. 5). If the denial of injunctive relief had no effect on the effective exercise of the O & T employees right-to-strike, counsel's argument that issuance of the injunction would have adversely affected the "effective exercise" of the right-to-strike is preposterous.

IV

Appellees make several contentions respecting an alleged "offer" to arbitrate the dispute (Pages 3, 7, 22 and 29).

They exaggerate the frequency and repetition with which they made this "offer". Actually, it was contained only in that portion of the Unions' Brief submitted to the District Court, which is quoted in Appellees' Brief at Page 8, Footnote 5.

The Company, by telegram, contested the rumored production and maintenance work stoppage plan and offered arbitration as a means of settlement. Nevertheless, the Unions put the plan into operation the following day. The quoted passages from the Unions counsel's Brief were not published until December 6, 1974--sixteen days after the International Union issued its work stoppage orders to local union officers and ten days after the Complaint in this action was served. (See attachment to Appellees' Brief, Page 2). The dispute which the Unions' counsel offered to arbitrate was, he said, "not arbitrable" under the terms of the labor agreement. (Appellees' Brief, Footnote 5, 1st Paragraph). For reasons best known to the District Court Judge, he chose not to dignify this "offer" with any comment.2/

Furthermore, Boys Markets does not instruct that the injunction will be denied when the union strikes, fails

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2/ Appellees' Brief states, matter of factly, that the Company and the Unions never had occasion to discuss the application of the no-strike clause to a sympathy strike. (See Page 6). Nothing, absolutely nothing, except total silence in the record on appealcan be relied upon to support this assertion. The District Court made no such findings.

or refuses to arbitrate the dispute, but later agrees to arbitration while insisting on continuance of its strike. Such a theory hardly advances the core purpose of the Norris-LaGuardia Act and Section 301 of the Labor Management Relations Act. 398 U.S. at 252-253. Denial of the injunctive remedy, where otherwise appropriate, may be warranted where arbitration had been repeatedly refused as a means of settlement; thus, failing to avert the strike, the violence, and even the need for the application of the injunctive remedy. Bro. of R.R. Trainmen v. Toledo P. & W. Ry., 321 U.S. 50, 56 (1944).

In the Hobart case, cited by Appellees, the NLRB and the Court were confronted with a case where the employer had refused to arbitrate the interpretation of the no-strike clause. Thus, the NLRB interpreted the clause and relied on the Company's failure, during a previous sympathy work stoppage, to interpret the no-strike clause in the same manner it was urging in the cited proceeding. That case is thus clearly distinguishable from the instant matter.

V

Denial of the remedial injunction which is sought by the Company does subvert the arbitration process. The Supreme Court is concerned with elimination of needless work stoppages by unions who are bound by collective bargaining agreements if the action which produces a stoppage is covered by the contractual and mandatory arbitration procedures.

Justice Douglas, concurring and dissenting in part with the majority decision in Philadelphia Marine Trade Ass'n. v. Local 1291, Longshoremen, 389 U.S. 64 (1967), stated at Pages 77-78:

> "We held in Textile Workers Union v. Lincoln Mills, 353 U.S. 448, that a failure to arbitrate was not part and parcel of the abuses against which the Norris-LaGuardia Act was aimed. We noted that Congress, in fashioning Section 301 of the Labor Management Relations Act, was seeking to encourage collective bargaining agreements in which the parties agreed to refrain from unilateral disruptive action, such as a strike, with respect to disputes arbitrable by the agreement. . . . Although Section 301 does not in terms address itself to the question of remedies, it commands the District Court to hold the parties to their contractual scheme for arbitration--the 'favored process for settlement' as my Brother Brennan said in dissent in Sinclair, 370 U.S. at 216."

In New York News, 374 F.Supp. 121, 125-127 (S.D. N.Y. 1974) which is cited by Appellees, the Court granted an injunction. The Court observed that there was an existing contract with a broad no-strike clause which contained only one express exception which was, however, not applicable to the facts of that case. There was no specific grievance that "triggered" the work slowdown. (374 F.Supp. at 127). The Court held that the dispute over the unions' right-to-strike was arbitrable; that is, whether the contract had terminated, thus freeing the union from the no-strike prohibition.

In NAPA Pittsburgh, 502 F.2d 321 (3d Cir. 1974), cert. denied, 43 U.S.L.W. 3330 (1974) and the North Carolina

Pilot Frieght case, 497 F.2d 311 (4th Cir. 1974), cert. denied, 43 U.S.L.W. 3212 (1974), these courts also determined that the terms of the contractual no-strike clause raised an arbitrable issue about the unions' right-to-strike. The Court issued remedial injunctive orders.

C O N C L U S I O N

For the reasons stated in this and its main Brief, the Company respectfully submits that the decision and order of the District Court should be reversed and remanded with instructions to order arbitration of the dispute whether defendants violated the terms of said agreement and that a remedial injunctive order should be issued against the defendants, their officers, agents and representatives.

Respectfully submitted,

JEREMY V. COHEN, ESQ.
(Flaherty, Cohen, Grande & Randazzo, P.C.)
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STATE OF ARIZONA

OFFICE OF THE SECRETARY

UNITED STATES OF AMERICA
STATE OF ARIZONA } ss.

I, **WESLEY BOLIN**, *Secretary of State,*

do hereby certify that

CHERYL A. SIMPSON

was appointed a Notary Public on the 19th day of June, 19 73, for a term of four years; that (~~he~~ she) has duly qualified by complying with all legal formalities required by law, and therefore is a duly qualified and acting Notary Public in the county of

Maricopa residing in the city of Phoenix State of Arizona,

(~~his~~, her) term ending the 18th day of June, 19 77, and I verily believe

the signature of CHERYL A. SIMPSON,

as subscribed to the annexed instrument to be genuine; all of (~~his~~, her) official acts in this capacity should be given due faith.

In Witness Whereof I have hereunto set my hand and affixed the Great Seal of the State of Arizona. Done at Phoenix the capital this 1st day of April A.D. 1975

Secretary of State

FLAHERTY, COHEN, GRANDE & RANDAZZO, P.C.

1016 Liberty Bank Building

Buffalo, New York 14202

March 31, 1975

Clerk of the Court
United States Court of Appeals
United States Courthouse
Foley Square
New York, New York 10007

Re: Buffalo Forge Company v.
United Steelworkers, et al.
No. 74-2698

Dear Sir:

Enclosed are twenty-rive (25) copies of Appellant's Reply Brief.

Copies of same have been mailed, certified, return receipt requested, to opposing counsel.

Yours truly,

Jeremy V. Cohen

JVC:cas
Enclosures

Cheryl A. Simpson
My Commission Expires June 18, 1977